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FEB 9 2001

FEDERAL COMMUNICATIONS COMMISSION
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February 9, 2001

BY HAND

Magalie Roman Salas, Secretary
Federal Communications Commission
445 - 12th Street, S.W., TW-A325
Washington, D.C. 20554

Re: *Ex Parte Presentation*
E911 Cost Recovery, CC Docket No. 94-102 /
King County Request, DA 00-1875

Dear Ms. Salas:

This letter serves as notification that on February 9, 2001, Fran Malnati, Lolita Smith, John Buchanan and Luisa Lancetti (representing Verizon Wireless), Jeff Pfaff and Jim Propst (representing Sprint PCS), Bob Calaff and Jim Nixon (representing VoiceStream Wireless Corporation), Brian Fontes (representing Cingular) and Sara Liebman (representing Cellular Telecommunications & Internet Association), had a meeting with Kris Monteith, Janet Sievert, Jane Phillips and Patrick Forster (of the Wireless Telecommunications Bureau's Policy Division) to discuss the above-captioned proceeding. The parties discussed their filings in this proceeding and the issues raised. Copies of presentation material distributed and discussed at the *ex parte* meeting are attached hereto.

Pursuant to Section 1.1206(a), an original and one copy of this letter are being filed with your office. Please associate this letter with the files in the above-captioned proceeding.

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Ms. Magalie Roman Salas, Secretary
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Please contact us should you have questions concerning the foregoing.

Sincerely,

WILKINSON BARKER KNAUER, LLP



By: Luisa L. Lancetti

Attachments

cc: Kris Monteith
Janet Sievert
Jane Phillips
Patrick Forster
Fran Malnati
Lolita Smith
John Buchanan
Jeff Pfaff
Jim Propst
Bob Calaff
Jim Nixon
Brian Fontes
Sara Liebman

Ex Parte Presentation
Verizon Wireless, Sprint PCS and VoiceStream Wireless Corporation
CC Docket No. 94-102
King County Request, DA 00-1875
February 9, 2001

OVERVIEW

- ***The E-911 Network Is a Dedicated Private Network.*** The E-911 network is a dedicated, private line network constructed at the request and direction of the PSAPs, and for their exclusive use. Congress recognized in the 911 Act that the design and implementation of the “end-to-end” E-911 network is the responsibility of state and local governments. See Pub. L. No. 106-81, 113 Stat. 1286, § 3(a) (1999); *Implementation of 911 Act*, FCC 00-327, ¶ 24 (rel. Aug. 29, 2000).
- ***The Rules and Precedent Support Demarcation Point at Wireless Switch.*** Under the Commission’s rules, PSAPs must upgrade their networks as a precondition to carrier E-911 obligations, and it is carriers’ responsibility to deliver enhanced 911 data to the PSAP’s network. Simply put, the Commission’s rules require that, for an E-911 request to be valid, the PSAP must be able to receive and utilize the carrier-provided data elements. The Commission’s cost recovery rules, the *Fourth Memorandum Opinion and Order*, and wireline precedent all confirm the fact that PSAPs are financially responsible for the E-911 network -- *i.e.*, for facilities beyond the wireless switch. The Commission should affirm that PSAPs remain financially responsible for these facilities. If the existing E-911 network facilities have not been upgraded to receive and utilize the data elements, it is the PSAP’s responsibility to enter into the necessary arrangements for additional network services to overcome its network deficiencies. This is also consistent with the 911 Act, which, as noted, left the determination of whether to have an “end-to-end” E-911 network and, the type of that network, to state and local governments. Again, wireless carriers remain responsible for the substantial costs associated with hardware/software changes to their existing networks for E-911 deployment purposes.
- ***The Bureau Does Not Have Authority to Grant King County’s Request.*** The *Fourth Memorandum Opinion and Order* authorizes Bureau resolution of disputes over the method of transmission of enhanced 911 information. King County and NENA, however, effectively seek reconsideration of the Commission’s rules and a significant change in CMRS carriers’ substantive legal obligations. The Bureau cannot resolve the King County request via promulgation of a new substantive rule or by changing the existing rule. It must reaffirm that Commission rules and precedent support demarcation at the wireless switch.

- ***Precipitous Action Is Unnecessary and Unwise.*** The Bureau should reject PSAP efforts to expand what is, fundamentally, a local dispute and local issue into a new nationwide rule. The Bureau should issue a decision that is narrow in scope, confirming existing law. PSAPs and carriers are, for the most part, able to agree on E-911 deployment issues that accommodate local requirements. Confirmation of the wireless switch as the demarcation point will be useful as a “default” mechanism in those rare cases where the parties cannot agree on E-911 deployment matters. However, precipitous Bureau action in this proceeding could instead undermine existing and future PSAP-carrier arrangements and hinder future E-911 deployment. The Bureau should proceed with caution and on a limited basis.

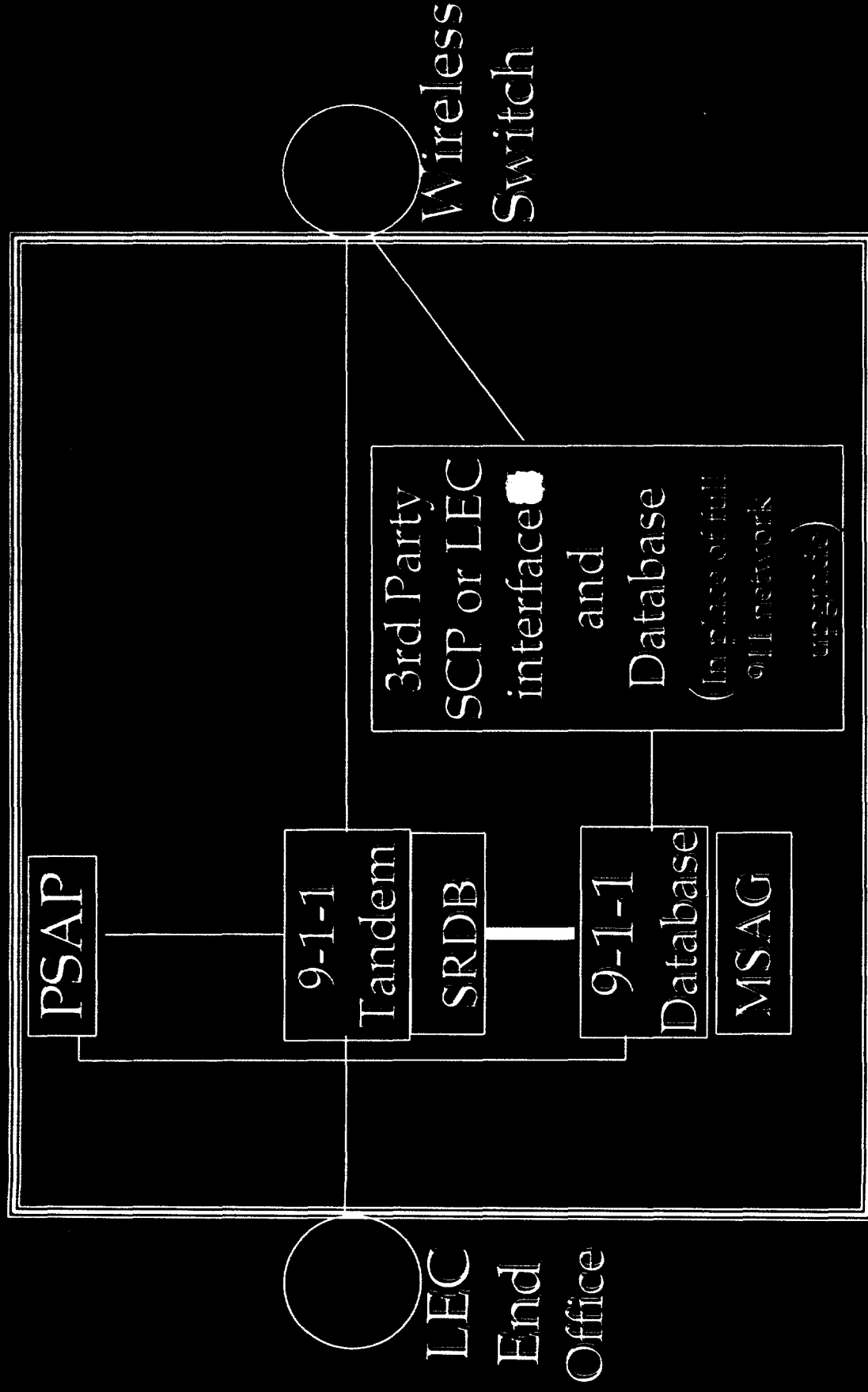
REBUTTAL TO NENA EX PARTE PRESENTATIONS

On January 16 and February 2, 2001, over three months after the public comment cycle on the Commission’s Public Notice closed, NENA submitted *ex parte* presentations arguing that CLEC practices should dictate the Commission’s actions in regard to King County’s request. There is no basis for the substantive rule change NENA advocates. Indeed, in some jurisdictions, PSAPs have actively exercised responsibility for MSC-selective router connections and third-party services necessary for NCAS implementation (e.g. Texas and Iowa) -- contrary to NENA’s assertions. At minimum, the full Commission will need to issue a supplemental notice seeking further comment on new matters raised in NENA’s filings if it is to rely on these arguments, and initiate rulemaking proceedings. Moreover, in the NENA filings there is no discussion of different regulatory issues, such as state PUC-imposed E-911 requirements for CLECs, or the technical issues involved in CLEC E-911 deployment. NENA’s arguments disregard the record submitted in this proceeding and the policy implications for both CMRS providers and ILECs.

- ***NENA Seeks to Shift Political Accountability for the Cost of E-911 Services.*** NENA makes the remarkable argument that it would be “easier” for CMRS providers to pay for facilities in the E-911 network and that “911 Authority budgets are limited . . . by the popular perception that mandating contributions to public safety systems are a form of taxation.” NENA *Ex Parte* Presentation, Feb. 2, 2001, at 2. State and local governments are required to provide revenue sources to fund E-911 deployment; the fact that it may be “easier” or more politically attractive to saddle wireless carriers with these costs is irrelevant and without support in the law.
- ***CLEC Practices Are Based on Voluntary Business Decisions, Not Public Policy.*** The fact that CLECs may pay for certain E-911 network costs does not mean that this is an appropriate business practice, much less one that should be mandated by the Commission. NENA’s recommended approach would result in discriminatory treatment between ILECs and CMRS carriers, contrary to Congress’ intent in the 911 Act and the Commission’s actions. See S. Rep. No. 106-138, at 6 (1999) (discussing policy of liability parity between wireless and wireline carriers); 14 FCC Rcd. 10954, ¶ 29 (1999) (asserting “policy of technological and competitive neutrality in wireless 911 service”).

- ***As the "Cost Causer," the PSAP Is Responsible for Facilities to the Wireless Switch.*** The record in this proceeding demonstrates that state commissions, including the Washington UTC, have traditionally held PSAPs responsible for wireline E-911 network costs, as evidenced by Qwest's tariff for Washington state. This is consistent with the sound policy that the "cost-causer" should bear the costs of the services it requests. See *National Security Emergency Preparedness Telecommunications Service Priority System*, 3 FCC Rcd. 6650, ¶ 60 (1988).
- ***CMRS Competition v. LEC Monopoly Is a Red Herring.*** NENA's statement that PSAPs paid for connections between the LEC central office and 911 Selective Router in the ILEC monopoly environment is a red herring. State PUCs decided not to treat these as contributed services and bury them as implicit subsidies in the ILECs' general rates. NENA implies that this arrangement should be "grandfathered," yet the ILECs' monopoly is over and the PSAPs remain responsible for E-911 network costs. NENA's references to CMRS carriers' ability to raise rates obfuscates PSAPs' responsibility for E-911 service and facilities. The fact that PSAPs need to have their routers connected to multiple carriers does not address the point that the PSAP remains the *cost causer*; the extent to which a PSAP acquires trunking facilities for such connections remains based on PSAP system requirements, and it must remain the PSAP's financial responsibility.
- ***State and Local Governments Fund the E-911 Network Via the Public Fisc.*** E-911 is, fundamentally, a state/local government service, and Washington PSAPs already receive substantial revenues from state assessments on telecommunications customers. There is no basis for imposing additional E-911 network deployment costs on carriers. The Commission expressly intended that its PSAP cost recovery rule ensure that state/local governments not shortchange PSAPs, but NENA would have carriers both subsidize the E-911 network *and* contribute directly to state and local funding mechanisms to cover PSAP E-911 network and deployment costs. See 14 FCC Rcd. 20850, ¶ 68 (1999). State and local PSAPs must remain responsible for their own E-911 services.

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End to End 9-1-1 Network